

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR-1908 - 2006
:
vs. : CRIMINAL DIVISION
:
DARRIL D. DOZIER, :
Defendant : PCRA

OPINION AND ORDER

Before the Court is Defendant's Motion for Post-Conviction Collateral Relief, filed September 15, 2009, as amended by counsel on February 18, 2010.¹ A conference on the motion was held March 31, 2010. Defendant has raised two issues, neither of which requires further hearing.

First, Defendant contends trial counsel was ineffective in failing to move to suppress the physical evidence by challenging the reasonableness of the police stop.² To be eligible for relief under the Post Conviction Relief Act, however, not only must a defendant show that trial counsel was ineffective, he must show that his conviction resulted from ineffective assistance of counsel which, in the circumstances of the particular case, "*so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.*" Commonwealth v. Granberry, 644 A.2d 204, 207 (Pa. Super. 1994)(emphasis added). Here, even if the Court assumes that trial counsel was ineffective for failing to file the specified suppression motion, that is, that the motion would have been successful and counsel had no reasonable basis for failing to file it, the Court cannot find that such failure undermined the

¹ Defendant's conviction of one count of persons not to possess firearms and one count of firearms not to be carried without a license was upheld on appeal. The only issues raised on appeal were that of the sufficiency and weight of the evidence and the length of the sentence. Defendant now raises other issues, in the form of claims of ineffective assistance of counsel.

² The charges arose from officers' discovery of a gun located on the front passenger seat, under Defendant's leg, when they asked him to step out of the vehicle after stopping it in response to a radio call. At trial, the Commonwealth introduced the gun, the officers' testimony regarding its discovery under Defendant's leg, and a videotape filmed from the front of the police cruiser showing the officers discovering the gun and its removal from the vehicle.

truth-determining process. The evidence sought to be suppressed was not fraught with possible error, such as a tainted identification process or a coerced confession, but was, rather, in the nature of *res gestae*: the video showed the officers discovering the gun under Defendant's leg and removing it from the vehicle. Although the video does not show the gun on the seat of the car, the actions of the officers removing it from the car indicate that it was on the passenger seat. The evidence was thus highly reliable and would not have reduced the reliability of the adjudication.³ The Court therefore concludes that Defendant is not entitled to relief on this ground.

Defendant also contends trial counsel was ineffective for failing to move to sever the person not to possess count from the other two counts with which Defendant was charged.⁴ The Court assumes Defendant is contending that the evidence that he was not entitled to possess a firearm, introduced by way of a stipulation to that effect, was unduly prejudicial to him and not probative of the issue of his guilt of possessing a firearm without a license (which was also the subject of a stipulation, that Defendant did not have a license to possess a firearm) and possessing an instrument of crime. While this contention survives scrutiny with respect to whether it could have undermined the truth-determining process, as evidence, even inferred, of prior criminal activity certainly can unduly adversely affect a jury's determination, under the circumstances of the instant case the Court does not believe that the outcome would have been different had the charges been tried separately.⁵ The evidence of Defendant's guilt was straight-forward and highly credible. The evidence that Defendant was not allowed to possess a firearm was presented, as noted above, by way of a stipulation that under the Crimes Code, Defendant could not legally have possessed a firearm on the date in question. In instructing the jury, the Court stated that the second and third elements of persons not to possess a firearm

³ See also Commonwealth v. Fowler, 703 A.2d 1027 (Pa. 1997). Although not binding precedent as it is a plurality opinion, the Court therein noted that tape-recorded evidence is one of the most reliable forms of evidence because it cannot commit perjury, forget facts, or be influenced by motive or bias, and held that the admission of that evidence did not undermine the truth-determining process, but to the contrary, was highly reliable and probative evidence of Fowler's guilt.

⁴ Defendant was also charged with possessing an instrument of crime, but was found not guilty of that charge.

⁵ If the record reveals that counsel was ineffective, it must be determined whether counsel's ineffectiveness so prejudiced the defendant's case that it is likely that the result would have been different absent the errors. See Commonwealth v. Glass, 605 A.2d 432 (Pa. Super. 1992), quoting Commonwealth v. Rollins, 580 A.2d 744 (Pa. 1990).

were “a matter of stipulation” and “I don’t think you have to worry about two and three.” N.T. June 12, 2007 at p. 63. The focus was on Defendant’s possession of the firearm, not his legal inability to possess it. That factor was so insignificant in this case that the Court is confident that it did not affect the jury’s verdict. Therefore, the outcome would not have been different even had the charges been severed and Defendant is thus not entitled to relief on this ground either.

Accordingly, the Court enters the following:

ORDER

AND NOW, this 23rd day of April 2010, upon review of the record and pursuant to Rule 907(a) of the Pennsylvania Rules of Criminal Procedure, it is the finding of this Court that Defendant's Motion for Post-Conviction Collateral Relief raises no genuine issue of fact and Defendant is not entitled to post conviction collateral relief.

As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to deny the Motion. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the Motion.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
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Hon. Dudley Anderson